

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	CASE NO. 8:05CR97
)	
Plaintiff,)	
)	
vs.)	TENTATIVE FINDINGS
)	
THOMAS L. FLEMING,)	
)	
Defendant.)	

The Court has received the Presentence Investigation Report ("PSR") and the government's objection thereto (Filing No. 65). See "Order on Sentencing Schedule," ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 2005 WL 50108 (U.S. Jan. 12, 2005), the sentencing guidelines are advisory.

The plea agreement reached pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) requires a base offense level of 10 and placement in criminal history category I. The plea agreement states that this agreement was intended to resolve all guideline issues such as criminal history, role, drug quantity, and "any other issues." The PSR assigns a base offense level of 19. The government objects to ¶ 59, which provides that the guideline range is 21 - 27 months, based on total offense level 16 and criminal history category I. The Court will discuss this matter with the parties at sentencing.

IT IS ORDERED:

1. The Court will discuss the issue(s) presented by the PSR and the government's objection at sentencing;
2. The parties are notified that my tentative findings are that the PSR is correct in all other respects;

3. If **any** party wishes to challenge these tentative findings, the party shall file, as soon as possible but in any event before sentencing, and serve upon opposing counsel and the court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this order, my tentative findings may become final;

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 20th day of October, 2005.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge